

## REMARKS

The outstanding Official Action maintains the rejection of claims 1 and 4 under §102(b) as allegedly anticipated by Heider ('667), and of claim 3 under §103(a) as unpatentable over Heider ('667). The Official Action states that applicants arguments distinguishing the label of Heider from the wall structure of the present claims is unconvincing as Heider's laminate is also clearly a structure, and is bonded directly to the wall of a container, and thus the label is thereby a wall structure. The rejection, however, fails to give the language of the pending claims due weight.

Specifically, claim 1 is directed to a wall structure comprising an intermediate layer of foamed plastic and outer, solid layers of plastic. (emphasis added) Later, the claim requires that "said plastic of the outer, solid layers is the same as said rigid polymer component of the foamed intermediate layer." Further, the specification and the accompanying figure make it clear that the claimed bottle has a wall having a tri-laminate structure, and of those three layers two of them are outer, solid layers of plastic. Especially when viewing the accompanying Figure, one of ordinary skill in the art would readily understand that the outer layers constitute the external layers on either side of the wall structure. That is, there is no supplemental supporting structure exterior to either of the outer layers. Thus, although it is true that applicants presently use the open-ended "comprising" transition, this nonetheless does not take away from the plain language of the claim requiring that the solid layers of plastic constitute the outermost portion of the wall, albeit on either side of that wall.

Heider does not disclose the same, or even an analogous, structure. Rather, Heider describes a label having some features in common with the overall structure

of the claimed bottle, but when the Heider label is incorporated into the bottle, the outer layers of the Heider label do not constitute the outer layer of the resulting wall. Accordingly, Heider does not anticipate, nor does it suggest, the bottle of the present claims.

To construe the Heider reference as teaching the same thing as the presently claimed wall structure, would require either the elimination of the word "outer" or a construction that is inconsistent with its plain meaning. There is nothing within the specification or any of the file history that would suggest that applicants are intending a use for that word other than its plain meaning. Thus, it is incumbent upon the Office to interpret the claim consistent with applicants' intent, and to afford the word "outer" its plain and intended meaning.

Finally, because there is no teaching or suggestion within Heider that the label described by Heider can function independently and exclusively as a wall in a bottle, that one of ordinary skill in the art would not be motivated to use the label of Heider as a wall structure in a bottle. Accordingly, the Heider reference and its disclosed label do not provide the necessary motivation to utilize that label as a wall component exclusive of other structure, and so the instant claims are not obvious over Heider.

Applicants respectfully submit that the foregoing arguments demonstrate that the pending claims are in condition for allowance. Reconsideration and withdrawal of all outstanding rejections is respectfully requested in favor of a formal notification of allowance. If the Examiner perceives any impediments to such a formal notification of allowance, applicants respectfully request that the Examiner contact

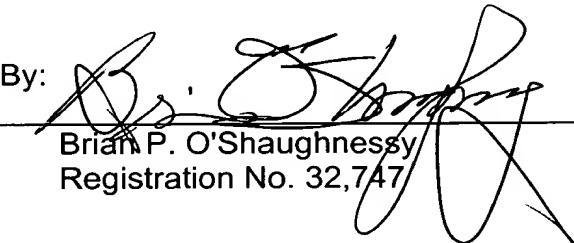
applicants' representative at the number provided below. Such informal communication will expedite examination and disposition of this case.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: March 10, 2004

By:

  
\_\_\_\_\_  
Brian P. O'Shaughnessy  
Registration No. 32,747

P.O. Box 1404  
Alexandria, Virginia 22313-1404  
(703) 836-6620